141-41
141-47

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. ~~1205.~~ 828

O. R. CRUTCHER, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED AUGUST 26, 1889.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1205,

O. R. CRUTCHER, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, SEPTEMBER 12, 1889.

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1 Supreme Court of United States.

O. R. CRUTCHER, Plaintiff in Error,
vs.
THE COMMONWEALTH OF KENTUCKY, Defendant in Error.

Petition for Allowance of Writ of Error, Assignment of Errors, and Prayer for Reversal.

O. R. Crutcher, plaintiff in error, comes now and makes assignment of errors, appearing upon the record in this case as follows:

I. The court of appeals of the Commonwealth of Kentucky erred in affirming the judgment of the circuit court of Franklin county, Kentucky, whereby that court refused to allow the plaintiff in error to file his certain plea to the indictment against him in said court, as in the authenticated transcript of the record hereto annexed doth appear, and whereby the said court did overrule the motion for a new trial filed by the plaintiff in error, as by said record doth appear, and whereby said court did overrule the motion of said plaintiff in error in arrest of the judgment of said court, as by said record doth appear, and whereby said court did find said plaintiff in error guilty of the offense charged in the indictment in this case, as by said record doth appear.

II. Said court of appeals of the Commonwealth of Kentucky did err in not reversing said judgment of said circuit court of Franklin county, Kentucky.

III. That by the law of the land the judgment of the said court of appeals of Kentucky should have been in favor of this plaintiff in error and against the defendant in error.

Wherefore plaintiff in error prays that the writ of error directed to the judges of said court of appeals of Kentucky
2 commanding them to send said record and proceedings, with all things concerning the same, to the Supreme Court of the United States, and to have the same at Washington on the second Monday of October next, in the Supreme Court of the United States to be then and there held, be allowed, and that said Commonwealth of Kentucky be cited and admonished to be and appear at the Supreme Court of United States, to be holden at said time, pursuant to said writ of error, to show cause, if any there be, why said judgment of said court of appeals of Kentucky should not be reversed.

And plaintiff in error does further pray that upon the hearing of said writ of error said judgment of said court of appeals of Kentucky be reversed and set aside and held for naught, and that he recover his costs in that behalf.

O. R. CRUTCHER,
By EDWARD COLSTON AND
GEORGE HOADLY, Jr.
His Attorneys.

Allowed August 3, 1889.

JOHN M. HARLAN,
Justice of the Supreme Court of the United States,
Assigned to the 6th Circuit.

3 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

President of the United States to the honorable the judges of the court of appeals of the State of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Commonwealth of Kentucky and O. R. Crutcher, wherein was drawn in question the validity of a statute of the Commonwealth of Kentucky, entitled "An act to regulate agencies of foreign express companies," passed March 2, 1860, and the amendment thereto, passed April 12, 1866, entitled "An act amending the law regulating the fees to be paid by foreign insurance and express companies," on the ground of the same being repugnant to the Constitution and laws of the United States, to wit, article I, section 8, clause 3, and article 4, section 2, of said Constitution, and article 4, section 1, of the amendments to said Constitution, and the decision was in favor of the validity of said statute and said amendment thereof a manifest error has happened, to the great damage of said O. R. Crutcher, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, we [do] command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of United
4 States, together with this writ, so that you have the same at Washington on the second Monday of October next, 1889, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 3d of August, in the year of our Lord one thousand eight hundred and eighty-nine.

[Seal 6th Circuit Court, Ky. Dist., U. S. of America.]

SAMUEL B. CRAIL,
Clerk of the Circuit Court of U. S. for the District of Kentucky,
By HENRY F. CASSIN,
Deputy Clerk.

Allowed, to operate as a supersedeas upon the execution & approval by me of a bond, in the penalty of five hundred dollars, con-

ditioned as required by section 1000 of the Revised Statutes of the United States, & upon the filing of such bond in the office of the clerk of the circuit court of Franklin county, in the Commonwealth of Kentucky, this Aug. 3, 1889.

JOHN M. HARLAN,
Justice of the Supreme Court of the U. S., Ass'd to the 6th Circuit.

5 I have received and filed in my office the bond mentioned in the allowance of this writ of error this 13th day of August, 1889.

[Seal Franklin Circuit Court, Kentucky.]

W. FRANKLIN, *C. F. C. C.*,
By W. M. FRANKLIN, *D. C.*,
Clerk of the Circuit Court of Franklin County, Commonwealth of Kentucky.

COMMONWEALTH OF KENTUCKY:

Court of Appeals.

I have this day received the within writ, and in obedience to the command thereof I have thereunto attached and return therewith, distinctly and openly, under the seal of said court, a full, true, and perfect record of the judgment and proceedings of said court and all things pertaining thereto in a certain cause depending in said court and there decided, and wherein O. R. Crutcher was appellant and The Commonwealth of Kentucky was appellee, as witness my hand and the seal of said court this 13th day of August, A. D. 1889.

[Seal Kentucky Court of Appeals.]

THOMAS J. HENRY,
Clerk Kentucky Court of Appeals.

6 THE UNITED STATES OF AMERICA, *ss:*

To the Commonwealth of Kentucky, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the court of appeals of Kentucky, wherein O. R. Crutcher is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Witness the Honorable John M. Harlan, justice of the said Supreme Court, this third (3d) day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

JOHN M. HARLAN,
Justice of the Supreme Court of the United States.

Service of this citation is hereby accepted.

JAMES P. HELM,
Att'y for Def't in Writ of Error.

[Endorsed:] United States — court. No. —. Citation to defendant in error. Filed —— —, 18—. —— ——, clerk.

7 COMMONWEALTH OF KENTUCKY:

Pleas before the honorable the court of appeals of Kentucky, at the capitol, in the city of Frankfort, on the 15th day of June, A. D. 1889, Chief Justice Joseph H. Lewis and Judges William H. Holt, Caswell Bennett, and William S. Pryor being present.

O. R. CRUTCHER, Appellant,
against
COMMONWEALTH OF KENTUCKY, Appellee.

Be it remembered that on the 14th day of March, A. D. 1889, the appellant, by his attorneys, Harmon, Colston, Goldsmith & Hoadley & Ira Julian, filed in the office of the clerk of the court of appeals of Kentucky a transcript of a record in words and figures following, to wit:

KENTUCKY:

Franklin Circuit Court.

Proceedings before the Hon. Warren Montfort, judge of the court aforesaid, at the court-house, in the city of Frankfort, Ky., on the 7th day of February, 1889.

THE COMMONWEALTH OF KENTUCKY, Pl'ff,
vs.
O. R. CRUTCHER, Def't.
} Indictment for Misdemeanor.

Be it remembered that at a circuit court held for the county aforesaid on the 1st day of November, 1888, the grand jury for Franklin county returned into court the following indictment—a true bill:

Indictment.

8 Franklin Circuit Court. October Term, 1888.

THE COMMONWEALTH OF KENTUCKY, Pl'ff.,
against
O. R. CRUTCHER, Def't.
} Indictment for Misdemeanor.

The grand jury of Franklin county, in the name and by the authority of the Commonwealth of Kentucky, accuse O. R. Crutcher of the offence of establishing, setting up, carrying on, doing, and transacting business for, as, and with an express company not incorporated by or under the laws of this Commonwealth, as agent therefor, without first having obtained a license so to do, committed in manner and form as follows, to wit:

The said O. R. Crutcher did, in the said county of Franklin, on the 1st day of May, 1888, and before the finding of this indictment and continuously from that time until the finding of this indictment, establish, carry on, transact, and do business as agent for the United States Express Company, an express company not incorporated under the laws of the State of Kentucky, but trading and doing business as a common carrier by express of goods, merchandise, money, and other things of value in and through the county and State aforesaid, by then and there receiving from divers and many persons, whose names are to this grand jury unknown, goods, merchandise, and things of value to be and were carried by express, for hire and pay, to and from the city of Frankfort and other places unknown to this grand jury, and by then and there during all said time carrying said goods, merchandise, and things
9 of value in and through the county and State aforesaid for hire and pay, and this without having any license so to do either for himself or for said United States Express Company.

Contrary to the form of the statute in such cases made and provided and against the peace and dignity of the Commonwealth of Kentucky.

JOHN S. GRANT,
Commonwealth's Attorney, 11th Judicial District, Ky.

Witnesses: Fayette Hewitt, Bee Frazier, J. A. Scott, D. C. Crutcher.

(Endorsed:) A true bill. L. J. Cox, foreman.

1888, Nov. 1st.—Received from the foreman of the grand jury in the presence of the grand jury and filed in open court.

W. FRANKLIN, *C. F. C. C.*

At a court held on the 3rd day of November, 1888, being the 18th day of the October term, a bench warrant is awarded for the arrest of the def't in the foregoing indictment, requiring bail of him in the sum of one hundred dollars.

On the 14th day of November, 1888, the following bench warrant was issued:

Bench Warrant.

The Commonwealth of Kentucky to any sheriff, constable, coroner, justice, marshal, or policeman of the Commonwealth of Kentucky, Greeting:

10 You are hereby commanded forthwith to arrest O. R. Crutcher and bring him before the Franklin circuit court to answer an indictment in that court against him for doing business as agent for an express company without a license so to do, or, if the court be adjourned for that term, that you deliver him to the jailer of Franklin county.

Given under my hand, as clerk of said court, this 14th day of November, 1888.

W. FRANKLIN, *Clerk.*

Bail.

It is ordered by the court that the within-named defendant may give bail in the sum of one hundred dollars, and if he desires to give such bail it may be taken by the sheriff of the county in which he was arrested or by the sheriff of Franklin county. Any other than a sheriff or deputy making this arrest must take the defendant to a sheriff or deputy, who alone can take bail.

W. FRANKLIN, *C. C. C.*

Officer's Return.

Executed on the within-named O. R. Crutcher by arresting him, and he gave bond, with M. H. Cromwell as surety. See said bond herewith return [returned] Dec. 4th, 1888.

J. W. GAINES, *S. F. C.*,
By W. N. GAINES, *D. S.*

The following is the bail bond referred to in officer's return.

Bail Bond.

O. R. Crutcher, being in custody, charged with the offence of doing business as agent for an express company without a license so to do, and being admitted to bail in the sum of one hundred dol-
11 lars, now we, M. H. Cromwell, of Franklin county, Kentucky, and —— ——, of —— county, Kentucky, hereby undertake that the above-named O. R. Crutcher will appear in the Franklin circuit court on the 1st day of its February term, 1889, to answer said charge, and will at all times render himself amenable to the orders and process of said court in the prosecution of said charge, and, if convicted, will render himself in execution thereof; or, if he shall fail to perform either of these conditions, that we will pay to the Commonwealth of Kentucky the sum of one hundred dollars.

Witness our hands this 4th day of Dec., 1888.

O. R. CRUTCHER.
M. H. CROMWELL.

Taken and subscribed before me this 4th day of Dec., 1888.

J. W. GAINES, *S. F. C.*,
By W. M. GAINES, *D. S.*

Written Plea Offered. Portion thereof Refused and Portion Filed.

At a court held on the 7th day of February, 1889, the def't tendered and offered to file a written plea, which was objected to by the attorney for the Commonwealth. The court refused to permit the plea to be filed except the portion of it which pleads not guilty, and def't excepts.

Agreed Facts Filed.

The parties then filed an agreed state of facts, and by consent the matters of law and fact are submitted to the court, and the evidence being heard—

Judg't.

It is adjudged that the def't is guilty as charged in the indictment, and that the Commonwealth recover against him the
12 sum of one hundred dollars; also the cost of this prosecution; to all of which def't excepts.

Special Plea.

COMMONWEALTH OF KENTUCKY, *County of Franklin:*

THE COMMONWEALTH OF KENTUCKY
vs.
O. R. CRUTCHER.

The special plea of O. R. Crutcher in bar of the indictment heretofore found against him by the grand jury of said county.

Now comes O. R. Crutcher, defendant, in his own proper person and as agent of the United States Express Company, and says that the United States Express Company and the said O. R. Crutcher, as its agent, are and were at the time of the commission of the alleged offences in said indictment complained of engaged in commerce among the several States, in this, to wit, that said United States Express Company does and did at the aforesaid times receive at and within the States of Ohio, Tennessee, Georgia, Virginia, Maryland, and divers others, at its several offices in said States, goods and chattels by it to be carried, for hire and reward, to Frankfort, in this Commonwealth and the county of Franklin, and does and did at said times, at said Frankfort, receive goods and chattels by it to be carried, for hire and reward, to divers points in said several States, at which said points said United States Express Company had offices and agents for the transaction of its said business of carrying goods, wares, and merchandise among the said several States, and did so carry the same and deliver same at said Frankfort and at
13 said points in said several States to the divers consignees thereof; and that said O. R. Crutcher, as agent of the said United States Express Company, did receive the aforesaid parcels at said Frankfort for shipment to said points in said other States, and did deliver said parcels so as aforesaid shipped from said several points in said several States to said Frankfort, and did collect the usual, customary, and proper reward for carrying and delivering said goods and chattels, and did pay over the same to the United States Express Company; and that said acts hereinbefore set

out are the same acts in said indictment complained of, and that the same formed and were a large part, to wit, fifty per cent., of the business done by said United States Express Company and said O. R. Crutcher, as its agent, at said Frankfort, and that said United States Express Company is a joint stock company, incorporated and having its principal office in the city and county of New York, in the State of New York, and engaged in the business of an express company — as well as without this Commonwealth:

Wherefore he says that the divers acts of the Legislature of this Commonwealth under and — pursuance of which said indictment was found are, so far as the same apply to him and to the United States Express Company, regulation of commerce among the several States and within the exclusive power of Congress, and void.

All of which he is ready to verify, and so he says he pleads "not guilty."

O. R. CRUTCHER,
By HARMON, COLSTON, GOLDSMITH AND HOADLY AND IRA JULIAN,
Att'ys for Def't.

14 The following is the agreement of facts filed:

Agreed Facts.

Franklin Circuit Court.

COMMONWEALTH, Pl't'ff,
vs.
O. R. CRUTCHER, Def't.

It is agreed that def't is agent of the United States Express Co., a foreign corporation doing the business ordinarily done by express companies in this country, of carrying goods and freight for hire not only from points in this State to other points in this State, but also of carry [carrying] same character of freight from points within this State to points without this State in divers parts of the United States, and *vice versa*.

And defendant, agent at Frankfort, Ky., never obtained any license to do such business, nor did said express company obtain any license from the State of Kentucky. The proportion of business done by said company within and without this State for the month of November, 1888, is shown by a statement herewith filed, marked "X," and the same proportion of business within and without this State, approximately, is generally done by said company.

15 *Statement of the Total Business, Both Received and Forwarded, Done by the United States Express Co. at Frankfort, Ky., Office for the Month of November,* 1888, *and the Percentage thereof Earned within and without the State of Kentucky, said Percentage Being Compiled on a Basis of Total Miles Carried.*

	Total revenue.	Foreign %.	Kentucky %.	Foreign revenue.	Kentucky revenue.
Rec'd from Annapolis, Md.	1 70	80 43	19 57	1 56	14
" " Boston, Mass.	1 60	87 74	12 26	1 40	20
" " Brokolyn, N. Y.	1 20	84 13	15 87	1 01	19
" " Bergen, Ky. 30					
F'rd to " " 1 40					
	1 70	x x	1 00	-------	1 70
" " Burnside, Ky. 30	30	x x	1 00	-------	30
" " Chattanooga	60	51 67	48 33	31	29
" " Cincinnati, O. 10 40					
Rec'd from " " 16 27					
	26 67	4 00	96 00	10 65	16 02
" " Caldwell, Kas. 15					
F'rd to " " 3 00					
	3 15	85 02	14 98	2 64	51
" " Chicago, Ill. 6 70					
Rec'd from " " 9 34					
	16 04	71 55	18 45	11 47	4 57
F'rd to Cleveland, O. 95	95	62 56	37 44	59	36
Rec'd from Baltimore, Md.	3 15	80 25	19 75	2 53	62
" " Buffalo, N. Y.	4 10	71 97	28 03	2 95	1 15
" " Clyde, O.	1 10	66 67	33 33	74	36
" " Columbus, O. 25					
F'rd to " " 55					
	80	46 13	53 87	37	43
" " Covington, Ky.	25	x x	x x	-------	25
" " Clifton Forge, Va.	25	53 10	46 90	13	12
" " Corning, O.	80	57 19	42 81	46	34
" " Crittenden, Ky.	30	-------	-------	-------	30
F'rd to Danville, Ky. 25					
16 Rec'd from Danville, Ky. 1 70					
	1 95	-------	-------	-------	1 95
Rec'd from Danville, N. Y.	75	84 14	15 86	63	12
" " Dayton, O. 3 60					
F'rd to " " 6 30					
	9 90	35 40	64 60	3 50	6 40
" " Des Moines, Ia. 2	2 15	83 33	16 67	1 79	36
Rec'd from Detroit, Mich.	1 45	59 74	40 26	87	58
" " Fisherville, Ky.	1 00	-------	-------	-------	1 00
" " Greenfield, O.	1 75	33 33	67 67	58	1 17
" " Georgetown, Ky.	1 80	-------	-------	-------	1 80
Fo'rd to Greenville, Miss. 5 30					
Rec'd from " " 1 50					
	6 80	86 28	13 77	5 86	94
	$92 21	-------	-------	$50 04	$42 17

Statement, &c.—Continued.

	Total revenue.	Foreign %.	Kentucky %.	Foreign revenue.	Kentucky revenue.
Am'ts bro't f'rd	92 21			50 04	42 17
F'rd to Galveston, Tex.	30	91 94	9 06	28	02
" Greenville, O.	75	66 67	33 33	25	50
" Hamilton, O. 35					
Rec'd from " " 50					
	85	16 95	83 05	14	70
" Greenville, Tex.	70	90 80	9 20	64	06
" Harrodsburg, Ky.	55				55
" Happy Hollow	50				50
" Junction City, Ky.	40				40
" Kalamazoo, Mich.	9 60	63 59	36 41	6 10	3 50
" Kansas City, Mo. 65					
F'rd to " " 1 40					
	2 05	81 95	19 05	1 68	37
" Knoxville, Tenn.	60	51 67	48 33	31	29
" Louisville, Ky. 7 60					
Rec'd from " " 12 35					
	19 95				19 95
" Lawrenceburg 2 55					
F'rd to " 19 70					
	22 25				22 25
Rec'd from Lynchburg, Va.	60	66 67	33 33	40	20
" Lansing, Mich.	75	76 75	22 25	58	17
Rec'd from Lima, O.	1 60	47 30	52 70	76	84
17 " Lexington, Ky. 50					
F'rd to " " 40					
	90				90
Rec'd from Moreland, Ky.	50				50
" Madison, Wis.	17	78 96	21 04	13	04
" Marshall, Mo.	20	79 89	21 11	16	04
" Meriden, Conn.	80	87 74	12 26	70	10
For'd to Lampasas, Tex.	2 10	89 33	10 67	1 88	22
" Meridian, Miss.	65	81 19	18 81	53	12
" Morbley, Mo.	70	77 04	22 96	54	16
" Minneapolis, Minn.	95	85 28	14 72	81	14
" New York 2 05					
Rec'd from " 18 70					
	20 75	84 14	15 86	17 45	3 30
" Newark, N. J.	1 10	84 14	15 86	92	18
" Nicholasville, Ky.	75				75
F'rd to New Orleans, La.	10	84 96	15 04	08	02
" Philadelphia 2 40					
Rec'd from " 12 67					
	15 07	82 41	17 59	12 42	2 65
" Paris, Ky.	50				50
" Providence, R. I.	15	87 74	12 26	13	02
" Richmond, Va. 55					
F'rd to " 1 30					
	1 85	80 25	19 75	1 48	37
" Richmond, Ky.	40				40
Rec'd from Frankfort, Ind.	1 40	46 13	53 87	65	75
	$202 70			$99 06	$103 64

Statement, &c.—Continued.

	Total revenue.	Foreign %.	Kentucky %.	Foreign revenue.	Kentucky revenue.
Am't bro. f'rd	202 70			99 06	103 64
Rec'd from Rochester, N. Y.	3 24	34 14	15 86	2 73	51
" Rushville, Ind.	25	36 79	43 21	10	15
" St. Louis, Mo. 1 00					
F'rd to " " " 3 00					
	4 00	69 60	40 40	2 78	1 22
" " Paul, Minn. 1 90					
Rec'd from " " " 92					
	2 82	85 28	14 72	2 40	42
Rec'd from Sadieville, Ky.	55				55
18 " Somerset, Ky.	30				30
" Vicksburg, Miss.	1 45	80 63	19 37	1 17	28
Rec'd from Williamstown, Ky.	25				25
" Waterbury, Conn.	4 25	87 74	12 26	3 71	54
" Stone Valley, Ky.	50				50
F'rd to Stanton, Va.	70				
" Tulersville, Ky.	25				25
" Washington, D. C.	70	80 25	19 75	56	14
" West Plain, Mo.	4 75	90 00	10 00	4 27	48
	$226 71			$117 34	$109 37
Net business for November	$226 71				
Foreign proportion of above		$117 34			
Kentucky proportion of above		109 37			
	$226 71	$226 71			

United States Express Company.

(13.) No. 18.

Abstract of Way-Bills Forwarded from Frankfort, Ky., Office for Nov. 30, 1888.

No. of letter.	Date.	To—	Expense.	Freight.	Total collect.	Prepaid.
	Nov. 16	Augusta, Ga.		60	60	
	" 8	Bergen, Ky.		1 40	1 40	
	" 9	"		20	20	
	" 13	Burnside, Ky.				30
	" 2	Cincinnati, O.				1 60
	" 15	"		60	60	80
	" 2	"		15	15	
	" 3	"		25	25	
	" 6	"		30	30	

Abstract, &c.—Continued.

No. of letter.	Date.	To—	Expense.	Freight.	Total collect.	Prepaid.
	Nov. 7	Cincinnati, O.	1 40	1 40	1 40	
	" 7	"				25
	" 8	"		1 05	1 05	
	" 9	"		35	35	
19	" 10	"		25	25	
	" 12	"				15
	" 12	"		50	50	
	" 13	"		45	45	
	" 16	"		30	30	
	" 17	"				45
	" 18	"				25
	" 24	"		35	35	
	" 26	"		1 00	1 00	
	" 27	"		75	75	
	" 28	"		60	60	
	" 8	Chicago, Ill.		60	60	
	" 13	"				1 00
	" 17	"		4 65	4 65	
	" 24	"		30	30	
	" 28	"				15
	" 9	Cleveland, O.		45	45	
	" 26	"		50	50	
	" 9	Columbus, "		55	55	
	" 12	Covington, Ky.				25
	" 21	Clifton Forge		25	25	
	" 23	Caldwell, Kas.		3 00	3 00	
	" 27	Corning, O.		80	80	
	" 28	Crittenden, Ky.		30	30	
			1 40	20 30	21 70	5 20
		Am't br't for'd	1 40	20 30	21 70	5 20
	Nov. 5	Dayton, O.		1 00	1 00	
	" 6	"		1 30	1 30	
	" 9	"		45	45	
	" 10	"		75	75	
	" 16	"				30
	" 20	"		1 00	1 00	
	" 21	"		75	75	
20	" 27	"		75	75	
	" 5	Danville, Ky.		25	25	
	" 6	Des Moines, Ia.		2 15	2 15	
	" 2	Frankfort, Ind.	1 40		1 40	
	" 2	Greenville, Miss.		85	85	
	" 5	"		1 85	1 85	
	" 7	"		1 70	1 70	
	" 14	"		90	90	
	" 7	Galveston, Tex.				30
	" 8	Greenville, O.		75	75	
	" 29	Hamilton, O.		35	35	
	" 7	Kalamazoo, Mich.	55		55	
	" 12	"	55		55	
	" 28	Kansas City, Mo.				1 40
	" 14	Knoxville, Tenn.		60	60	
	" 1	Lawrenceburg, Ky.	1 10	2 35	3 40	
	" 2	"		25	25	

Abstract, &c.—Continued.

No. of letter.	Date.	To—	Expense.	Freight.	Total collect.	Prepaid.
	Nov. 3	Lawrenceburg, Ky.		60	60	
	" 5	"		1 35	1 35	
	" 6	"		35	35	
	" 7	"	50	55	1 05	
	" 8	"		40	40	
	" 8	"		25	25	
	" 9	"		25	25	
	" 10	"		35	35	25
	" 12	"		50	50	
	" 14	"		1 95	1 95	
	" 15	"	2 00	1 60	2 60	25
	" 16	"		1 05	1 05	
	" 17	"	74	1 75	2 49	
	" 20	"		25	25	
	" 21	"		20	20	
	" 22	"		2 75	2 75	
21	" 24	"		90	90	
	" 29	"		50	50	
			8 24	53 95	62 19	7 95
		Am't bro. f'rd	8 24	53 95	62 19	7 95
	" 27	Lawrenceburg, Ky.		35	35	
	" 28	"		25	25	
	Nov. 28	"		20	20	
	" 3	Louisville, Ky.		2 10	2 10	
	" 9	"		30	30	
	" 12	"				30
	" 12	"		25	25	25
	" 13	"		50	50	40
	" 13	"		25	25	
	" 15	"		25	25	
	" 16	"				25
	" 16	"				25
	" 18	"		40	40	
	" 21	"				15
	" 21	"				60
	" 28	"				15
	" 28	"		40	40	
	" 27	"		50	50	
	" 28	"		30	30	
	" 5	Lampasas, Tex.				2 10
	" 13	Lexington, Ky.		15	15	
	" 26	"		25	25	
	" 6	Meridian, Mo.				65
	" 6	Morberly, Mo.				70
	" 15	Minneapolis, Minn.				95
	" 12	New York				15
	" 16	"				25
	" 24	"		60	60	
	" 28	"		75	75	
	" 28	New Orleans, La.				30
22	" 13	"		10	10	
	" 2	Philadelphia, Pa.		75	75	
	" 23	"		25	25	
	" —	"		35	35	

Abstract, &c.—Continued.

No. of letter.	Date.	To—	Expense.	Freight.	Total collect.	Prepaid.
	Nov. 29	Philadelphia, Pa.		25	25	
	" —	"		80	80	
			8 24	64 25	72 49	15 40
		Am't bro. f'rd	8 24	64 25	72 49	15 40
	Nov. 28	Richmond, Ky.		40	40	
	" 23	Richmond, Va.		1 30	1 30	
	" "	St. Paul, Minn.				1 20
	" 28	"				70
	" 8	St. Louis, Mo.		2 65	2 65	
	" 15	St. "				35
	" 20	Stanton, Va.		70	70	
	" 16	Tatesville, Ky.		25	25	
	" 16	Washington, D. C.				70
	" "	West Plains, Mo.		4 75	4 75	
			8 24	74 30	82 54	18 35

(17.)

United States Express Company.

Received at New York office —— —, 188–.

Statement from Frankfort, Ky., Office, No. 18, *Including all Way-Bills and Proceeds Received Previous to Nov.* 30*th*, 1888.

Forwarded to New York on way-bills dated —— —, 188–.

Date.	From (office or route and messenger).	Expense.	Collect ch'g's, including expense.	Additions.	Deductions.	Prepaid.	
Nov. 17	Annapolis, Md.					50	
" 6	"					50	
" 2	"					70	
" 26	Boston, Mass.	15	45				
" 24	"		1 05				
" 7	"		25				
Oct. 30	23 Brooklyn, N. Y.					50	Paid beyond.
Nov. 10	Brooklyn, N. Y.		70				
" 13	Bergen, Ky.		30				
" 1	Baltimore, Md.		2 25				
" 8	"		90				

Statement, &c.—Continued.

Date.	From (office or route and messenger).	Expense.	Collect ch'g's, including expense.	Additions.	Deductions.	Prepaid.
Oct. 31	Buffalo, N. Y.		55			
Nov. 9	"		50			
" 16	"		65			
" 19	"		1 00			
" 21	"					75
" 22	"		65			
" 18	Cincinnati, O.		30			
" 28	"		40			
" 23	"		30			
" 23	"					19
" 22	"		30			
Oct. 31	"		35			
Nov. 11	"		85			
" 21	"		95			
" 15	"		30			
" 21	"		25			
" 19	"		35			
" 19	"		65			
" 11	"		35			
" 17	"		30			
" 19	"		30			
" 16	"		1 40			
" 14	"					25
" 13	"		25			
" 13	"		30			
" 12	"		30			
		15	17 40			3 39
	24 Am't bro. f'rd	15	17 40			3 39
Nov. 12	Cincinnati, O.		30			
" 13	Cincinnati, O.		45			
" 13	"					25
" 10	"		25			
" 10	"		30			25
" 8	"		25			
" 8	"		65			
" 6	"		25			
" 7	"		45			
" 6	"		25			23
" 6	"		95			
" 6	"		30			
" 5	"		70			
" 5	"		40			
" 2	"		55			
" 3	"		35			
" 1	"		75			
" 1	"		30			
Oct. 30	Caldwell, Kas.					15
Nov. 3	Chicago, Ill.		3 50			
" 12	"		30			
" 14	"					55

Statement, &c.—Continued.

Date.	From (office or route and messenger).	Expense.	Collect ch'g's, including expense.	Additions.	Deductions.	Prepaid.	
Nov. 16	Chicago, Ill.					60	
" 22	"		70				
" 23	"					65	
" 23	"		60				
" 10	"		90				
" 24	"		25				
" 26	"					60	
" 28	"					60	
" 27	"					09	
" 28	Clyde, O.		1 10				
" 29	25 Columbus, O.		25				
" 28	Danville, Ky.		30				
" 20	Danville, Ky.		30			25	
" 16	"					35	
" 15	"		25				
" 8	"					25	
" 17	Danville, N. Y.		75				
" 16	Dayton, O.		50				
" 10	"		55				
" 8	"		55				
" 1	"					1 00	
" 2	"		1 00				
		15	36 15			9 21	
	Am't bro. f'rd	15	36 15			9 21	
Nov. 24	Des Moines, Ia.						Pass.
" 26	Detroit, Mich.		1 45				
" 5	Frankfort, Ind.		1 40				
" 6	Fisherville, Ky.		1 00				
" 12	Greenfield, O.		95				
" 13	"		1 00				
" 5	Georgetown, Ky.					30	
" 24	"		50				
" 27	"					50	
" 28	"		50				
" 19	Greenville, Miss.	1 50	3 00				
" 23	Greenville, Tex.		70				
" 9	Hamilton, O.		25				
" 7	"		25				
Oct. 31	Harrodsburg, Ky.					25	
Nov. 15	"					30	
" 10	Happy Hollow, Ky.					50	
" 16	Junction City, Ky.					40	
Oct. 31	Kalamazoo, Mich.		70				
Nov. 7	26 "		50				
" 5	"	55	55				
" 8	Kalamazoo, Mich.		60				
" 9	"		1 00				
" 12	"	55	55				
" 14	"		40	15			
" 15	"		60				

Statement, &c.—Continued.

Date.	From (office or route and messenger).	Expense.	Collect ch'g's, including expense.	Additions.	Deductions.	Prepaid.
Nov. 15	Kalamazoo, Mich.		1 20			
" 17	"	55	55			
" 21	"		40	15		
" 22	"		1 50		05	
" 29	"		2 00			
" 28	"		45			
" 21	Kansas City, Mo.		65			
" 27	Louisville, Ky.		1 90			
" 29	"	50	50			
" 27	"	1 10	1 00			
" 26	"		25			
" 25	"		50		25	25
		4 90	62 75	30	05	11 71
	Am't br't f'rd	4 90	62 75	30	05	11 71
Nov. 23	Louisville, Ky.		25			
" 22	"		75			
" 20	"		25			
" 20	"		25			
" 19	"					40
" 17	"		1 05			
" 16	"		25			
" 15	"		25			
" 14	"		80			
" 13	"		85			
" 12	"		25			
" 14	"		25			
" 12	27 "		25			
" 14	"		25			
" 8	"		50			
" 7	"		25			
" 6	"		25			
" 5	"		60			
" 3	"		25			
" 5	"		25			
Oct. 31	"					25
Nov. 3	"		25			
" 1	"		50			
" 1	Lynchburg, Va.		60			
" 17	Lansing, Mich.					75
" 24	Lima, O.		160			
" 27	Lexington, Ky.					25
" 20	"					25
" 28	Lawrenceburg, Ky.		25			
" 27	"					25
" 21	"		50			
" 9	"		35			
" 12	"		25			
" 9	"		15			
" 8	"		50			
" 5	"		15			

Statement, &c.—Continued.

Date.	From (office or route and messenger.)	Expense.	Collect ch'g's, including expense.	Additions.	Deductions.	Prepaid.	
Nov. 6						15	
" 17	Mooreland, Ky.					50	
" 8	Madison, Wis.					17	
" 14	Marshall, Mo.					20	
" 23	Meriden, Conn.		80				
" 27	New York		50			60	
" 27	"		30				
		4 90	77 25	30	05	15 73	
	28 Am'ts bro. f'rd	4 90	77 25	30	05	15 73	
Nov. 24	New York					55	
" 22	"		25				
" 22	"		60		15		
" 21	"		55		15		
" 17	"		30				
" 17	"		60			45	
" —	"					90	
" 13	"						
" 14	"		85				
" 8	"		65				
" —	"		1 00		35		
" 7	"		50				
" 7	"					45	
" 7	"		2 25		75		
" 1	"		30		05		
" 1	"		1 75		65		
" 2	"		2 70		95		
Oct. 31	"		95		20		
" 30	"	35	3 70				
" 30	"		65		15		
" 30	"		1 40		40		
Nov. 1	Newark, N. J.		1 10				
" 3	Nicholasville, Ky.					25	
" 5	"		25				
" 27	"					25	
" 26	Philadelphia, Pa.		95				
" 28	"		1 80				
" 23	"		1 20		20		
" 21	"		60				
" 20	"		55			37	
" 16	"						
" 16	"		1 00		25		
" 15	"		1 60				
" 8	29 "		1 35				
" 7	"		65				
" 2	"		75			1 20	
Oct. 31	"		30				
		5 15	108 15	30	4 30	20 15	

Statement, &c.—Continued.

Date.	From (office or route and messenger).	Expense.	Collect ch'g's, including expense.	Additions.	Deductions.	Prepaid.
	Am't bro. f'rd	5 15	108 15	30	4 30	20 15
Oct. 30	Philadelphia, Pa.					75
" 31	"		25			
Nov. 19	Paris, Ky.					25
" 28	"		25			
" 26	Providence, R. I.		15			
" 23	Richmond, Va.		55			
" 17	Rochester, N. Y.		3 60		60	
" 12	"		24			
" 14	Rushville, Ind.		25			
" 21	St. Louis, Mo.					10
" 8	"					55
" 8	"					35
" 7	St. Paul, Minn.					42
" 17	"					50
" 14	Sadieville, Ky.		25			
" 20	"					30
" 13	Somerset, Ky.					30
" 3	Vicksburg, Miss.					75
" 4	"	40	80			
" 16	"	30	60			
" 15	Millersburg, Ky.					25
" 7	Waterbury, Conn.		4 25			
" 22	Slome Valley		50			
		5 85	119 84	30	4 90	24 67
Additions		30				
Prepay. rec'd		24 67				
			24 97			
			144 81			
30	Bro't f'rd		144 81			
	Less expense	5 85				
Deductions		4 90				
			10 75			
			134 06			
P-pay. on abstract		18 35				
Freight on "		74 30				
			92 65			
	Total net business		$226 71			

At a court held on the 8th day of Feb'y, 1889.

Grounds Filed & Motion for New Trial & Overruled.

The def't filed grounds in writing in arrest of judgment and moved the court for a new trial; which motion, being heard, is overruled, and def't excepts.

Bill of Exceptions Filed.

The def't tendered a bill of exceptions, which was signed by the court and is ordered to be filed and made part of the record.

Appeal Granted.

The def't prayed an appeal to the court of appeals from the judgment herein, which is granted.

Motion & Grounds for New Trial.

Franklin Circuit Court.

COMMONWEALTH, Pl't'ff,
vs.
O. R. CRUTCHER, Defendant. } Motion and Grounds for New Trial & in Arrest of Judgment.

Defendant, O. R. Crutcher, comes and moves for a new trial and arrest of judgment herein because—

First. The judgment herein is contrary to law, and the several statutes of this State requiring the United States Express Company and its agents to pay a license tax to this State are each con-
31 trary & repugnant to the Constitution of the United States, because they impose a tax upon foreign express companies not imposed upon domestic companies or citizens, and said statutes seek to impose a tax upon interstate commerce, whereas Congress of the U. S. has the exclusive right to regulate commerce among the several States.

HARMON, COLSTON, GOLDSMITH & HOADLY & IRA JULIAN,
Att'ys for Def't.

Franklin Circuit Court.

COMMONWEALTH, Pl't'ff,
vs.
O. R. CRUTCHER, Def't. } Bill of Exceptions.

Be it remembered that upon the trial of this cause the defendant tendered and offered to file a special plea in bar (see page 7), to which the att'y for the Commonwealth objected, and the court sustained the objection as to all of said plea, except so much thereof as states "the defendant pleads that he is not guilty;" to which ruling of the court defendant excepted and objected.

The Commonwealth's attorney and the defendant then filed an agreed statement of facts, with an exhibit, marked "X," as part of said agreed facts (see page 10), and then the law and facts were submitted by agreement to the court (the plea of not guilty being entered), and after argument of counsel on both sides the court adjudged that the defendant was guilty as charged, and entered judgment against him for $100 fine (here insert judgment), to which defendant excepted and objected.

Afterwards defendant filed grounds and moved the court to grant him a new trial and to arrest the judgment against him (see
32 page 24 for motion and grounds), and the court overruled said motion, to which defendant excepted and prayed an appeal to the court of appeals of Kentucky, which was granted; and this was all the evidence offered and all the evidence heard, either for pl't'ff or def't, and defendant tenders this his bill of exceptions, and asks that same be signed, sealed, and made part of the record.

WARREN MONTFORT,
Judge 11th Jud. Dist. Ky.

On the 13th day of March, 1889, the following bond was excepted:

Supersedeas Bond.

Franklin Circuit Court.

O. R. CRUTCHER, Appellant,
vs.
THE COMMONWEALTH OF KY., Appellee.

The appellant, O. R. Crutcher, having prayed an appeal from the judgment of the Franklin circuit court rendered against him at the Feb'y term, 1889, of Franklin circuit court for a fine of one hundred dollars and costs—

Now, we covenant to and with the Commonwealth of Kentucky that if said judgment be affirmed we will pay said fine and costs and all damages thereon and the costs of the appeal.

Witness our hands this 13th day of March, 1889.

O. R. CRUTCHER.
B. H. FRAZIER.

Taken and subscribed before me this 13th day of March, 1889.

W. FRANKLIN, *C. F. C. C.*

33 STATE OF KENTUCKY, *Franklin Circuit Court,* } *sct:*

I, W. Franklin, clerk of the Franklin circuit court, do certify that the foregoing 30 pages contain a full, true, and complete transcript of the record and proceedings had in the cause therein mentioned.

Witness my hand this 13 day of March, 1889.

W. FRANKLIN, *C. F. C. C.*,
By W. M. FRANKLIN, *D. C.*

On the foregoing transcript the following endorsement appears: O. R. Crutcher, appellant, *vs.* The Commonwealth, appellee. Statement.

Judgment appealed from may be found on page 7 of this record, and was rendered at the Feb'y term, 1889, of Franklin circuit court.

HARMON, COLSTON, GOLDSMITH & HOADLEY & IRA JULIAN,
Att'ys for Appellant.

34 Afterwards, at a court of appeals held as aforesaid, on the 16 day of March, A. D. 1889, an order was made herein as follows, to wit:

"On motion of appellant, it is ordered that this case be docketed, advanced, and set at the foot of the oral argument docket."

Afterwards, at a court of appeals held as aforesaid, on the fourth day of June, A. D. 1889, the following order was entered herein, to wit:

This cause was argued by J. P. Helm, for appellee; George Hoadly, Jr., for appellant, and submitted.

Afterwards, at said court held as aforesaid, the following orders and judgments were entered herein, to wit:

The court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed, and that appellee recover of appellant ten per cent. damages on the amount of the judgment susperseded, which is ordered to be certified to said court.

It is further considered that appellee recover of appellant its cost herein.

And on said 15th day of June, 1889, said court delivered the following opinion, to wit:

Kentucky Court of Appeals, June 15th, 1889.

35 O. R. CRUTCHER, Appellant, *vs.* COMMONWEALTH, Appellee. } Appeal from the Franklin Circuit Court.

Opinion of the court delivered by Judge PRYOR:

It seems to us that the case of Woodward against the Commonwealth, in which the statute appears in full, decided by this court at its last term, determines the question now presented. Counsel for the appellant now claims that the statute of this State is invalid, as its effect is to regulate commerce among the several States. The agent of the express company was fined for not paying to the auditor a fee of five dollars, or, rather, for failing to take out a license required by the act regulating the agencies of foreign express companies, passed in March, 1860, and amended by the act of 1866. That

the company of which the appellant is agent is a corporation created by the laws of New York doing business in this State as a carrier of goods, wares, and merchandise is conceded, and that it transports goods, &c., out of the State into other States and all other species of property usually incident to such transportation is admitted, both into the State and out of it. It appears that at least fifty per cent. of the business done by this agent consists in the carrying of goods from the place of his agency, Frankfort, to other States. That the carrying and transportation of goods from one State to another is a branch of interstate commerce is not controverted, but it is claimed that there is nothing in the legislation imposing on those who desire to act as the agents of this foreign corporation the burden of paying to the auditor the fee of five dollars for recording his agency, or, rather, for issuing him his license to act as such.

36 The statute was enacted for the benefit of the citizens of the State, under which the auditor is required to have satisfactory evidence of the ability and solvency of the corporation to do that which it has undertaken to do by virtue of its act of incorporation. Those who intrust to its custody the transportation of their property are entitled to some security that its undertaking will be performed, and we find no law of Congress or any constitutional provision that would deny to the State the right to impose such a burden upon those who undertake the discharge of such responsible duties. There is no discrimination made between corporations doing a like business, and the State, although the appellant's company is a foreign corporation, has the same right to license the business and calling of this agent as it would that of the lawyer or merchant whose business is confined to the State alone.

In the case of Smith *vs.* Alabama, 124 U. S., where the train of cars or the main line of the road extended from the one State into the other and passengers and freight constantly transported over the entire line, the Supreme Court held that a statute of Alabama requiring the locomotive engineers to be examined and licensed by a board appointed for that purpose before attempting a discharge of their duties was constitutional and no impediment to the free transaction of commerce among the States. (See also Nashville Railway, &c., *vs.* Alabama, 128 U. S.) We cannot perceive how any burden has been placed by the State upon interstate commerce by the provisions of the enactment in question, and must therefore affirm the judgment.

37 COMMONWEALTH OF KENTUCKY:

I, Thomas J. Henry, clerk of the court of appeals for the Commonwealth of Kentucky, hereby certify that the preceding thirty pages contain a true and complete copy of the record and proceedings had in said court in the case of O. R. Crutcher, appellant, against Commonwealth of Kentucky, appellee, as appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed

the seal of my said office. Done at Frankfort, Kentucky, this 10th day of July, A. D. 1889.

[Seal Kentucky Court of Appeals.]

THOMAS J. HENRY,
Clerk Kentucky Court of Appeals.

Fee for this transcript, $10.70.

Endorsed on cover: Kentucky court of appeals. No. 1205. O. R. Crutcher, plaintiff in error, *vs.* The Commonwealth of Kentucky. Filed August 26, 1889.

FILED.
NOV 26 1889

SUPREME COURT OF THE UNITED STATES.

O. R. CRUTCHER,

Plaintiff in Error,

against

THE COMMONWEALTH OF KENTUCKY,

Defendant in Error.

STATEMENTS AND POINTS ON BEHALF OF THE PLAINTIFF IN ERROR.

W. W. MAC FARLAND,

Of Counsel.

C. G. Burgoyne's Printing Business, Cor. Centre and Walker Sts., N. Y.

Supreme Court of the United States,

O. R. CRUTCHER,
Plaintiff in Error,

AGAINST

THE COMMONWEALTH OF KENTUCKY,
Defendant in Error.

Statement.

The plaintiff in error was indicted for doing business as an agent of the United States Express Company in Kentucky without first obtaining a license from the State Auditor.

The indictment was found under two statutes of the State of Kentucky, one entitled "An Act to regulate agencies of foreign Express Companies," passed March 2, 1860, and the other entitled "An Act amending the law regulating the fees to be paid by foreign insurance and express companies," passed April 12, 1866.

The indictment is in the following words: "The Grand Jury of Franklin County, in the name and by the authority of the Commonwealth of Kentucky, accuse O. R. Crutcher of the offense of establishing, setting up, carrying on, doing and transacting business for, as and with an express company not incorporated by or under the laws of this commonwealth, as agent therefor, without first having obtained a license so to do, committed in manner and form as follows, to wit:

The said O. R. Crutcher did, in the said County of Franklin, on the 1st day of May, 1888, and before the finding of this indictment, and continuously from that time until the finding of this indictment, establish, carry on, transact, and do business as agent for the United States Express Company, an express company not incorporated under the laws of the State of Kentucky, but trading and doing business as a common carrier by express of goods, merchandise, money, and other things of value, in and through the county and State aforesaid, by then and there receiving from divers and many persons, whose names are to this grand jury unknown, goods, merchandise and things of value to be and were carried by express, for hire and pay, to and from the City of Frankfort and other places unknown to this grand jury, and by then and there during all said time carrying said goods, merchandise and things of value in and through the county and State aforesaid for hire and pay, and this without having any license so to do either for himself or said United States Express Company.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the Commonwealth of Kentucky" (p. 4).

In principle, there is no difference between the acts of 1860 and of 1866. The latter merely raises the license fee from $2.50 to $5.

Woodward vs. Commonwealth, 7 Southwestern Reporter, 618.

It is sufficient, therefore, to refer to the Act of 1860, which, so far as material to the present case, is as follows:

"SECTION 1. Be it enacted by the General Assembly of the Commonwealth of Kentucky that it shall not be lawful after the first day of May, 1860, for any agent of any express company not incorporated by the laws of this Commonwealth, to set up, establish or carry on the

business of transportation in this State, *without first obtaining a license from the Auditor of Public Accounts to carry on such business.*

"SEC. 2. Before the Auditor shall issue such license to any agent of any company *incorporated* by any State of the United States, there shall be filed in his office a copy of the charter of such company and a statement made, under oath of its president or secretary, showing its assets and liabilities, and distinctly showing the amount of its capital stock and how the same has been paid, and of what the assets of the company consist, the amount of losses due and unpaid by said company, if any, and all other claims against said company, or other indebtedness, due or not due; and such statement shall show that the company is possessed of an actual capital of at least $150,000, either in cash or in safe investment, exclusive of stock notes. Upon the filing of the statement above provided, and furnishing the Auditor with satisfactory evidence of such capital, it shall be his duty to issue license to such agent or agents as the company may direct to carry on the business of expressing or transportation in this State.

* * * * * * *

"SEC. 4. The statements required by the foregoing sections shall be renewed in each year thereafter, either in the months of January or July; and the Auditor, on being satisfied that the capital or deposit, consisting of cash securities or investments as provided in this act, remain secure to the amount of $150,000, shall renew such license.

"SEC. 5. Every agent obtaining such license, or renewal thereof, as required by this act, shall, before transacting any business of transportation or expressing in this State, file in the office of the Clerk of the County Court in which he or they may desire to do business for said company, a copy of the statement required to be filed with the Auditor, and a copy of the license, which shall be carefully preserved by the Clerk

for public inspection; and, in case of a renewal shall, in like manner, file in the office of a Clerk of the County Court a copy of such renewed statement and license within thirty days after it shall be filed with the Auditor.

"SEC. 6. The statements required by the foregoing sections shall be made up to a period within six months preceding the filing of the same with the Auditor.

"SEC. 7. If, at any time after the filing of the statements by this act required, it shall be made to appear to the Auditor that the available capital of any such company has been reduced, by misfortune or otherwise, below the sum of $150,000, it shall be his duty to revoke the license or licenses granted to any agent or agents of such company.

* * * * * * * *

"SEC. 9. For any license issued by the Auditor under this act and for each renewal thereof he shall be allowed the sum of $2.50, to be paid by the agent or company taking out such license."

The case was submitted to the Court upon an agreed statement of facts without the intervention of a jury. By that statement (p. 8), it appears that the defendant is an agent of the United States Express Company, the latter doing the business ordinarily done by express companies in this country, of carrying goods and freight for hire, not only from points in this State to other points in this State, but also of carrying the same character of freight from points within this State to points without this State in divers parts of the United States, and *vice versa*. That the defendant, as such agent, never obtained any license to do such business nor did said Express Company obtain any license from the State of Kentucky.

The attorneys for the defendant, the agent, erroneously supposed that the United States Express Com-

pany was a corporation; hence that statement in the stipulation. In fact it is an unincorporated voluntary association, as this Court had occasion to notice in the case of Chapman vs. Barney, 129 U. S., 677.

This mistake of fact is of no importance here, because the only question that is or could be brought up is as to the constitutionality of the statute in question requiring either natural or legal persons to obtain a license from the State of Kentucky as a condition of maintaining an agency in that State for carrying on interstate commerce.

The amount of the license fee is trivial and unimportant, but the question involved is of vital interest to express companies, for such is the disposition of different States, and more especially of the Southern States, to levy tolls upon interstate commerce by one device and another for State and municipal purposes that, unless these efforts were resisted at every step, the burden so imposed would become unbearable.

Assignment of Errors.

The Statutes of the State of Kentucky, under which the indictment was found and the conviction obtained, were unconstitutional and void and the Court erred in rendering judgment against the plaintiff in error, and in denying the motion in arrest of judgment and the motion for a new trial (p. 20).

ARGUMENT.

First. The statute in question was passed in 1860 before the long line of decisions of this Court since rendered had demonstrated that interstate commerce and all matters relating to such commerce were within the

exclusive jurisdiction of Congress. It is not probable that a statute so obviously in violation of the commercial clause of the Federal Constitution would be enacted at this day.

Second. The exaction of the license in question necessarily implies and assumes the right of the State to regulate the business of express companies within the State of Kentucky. The statute has no relation to the merely interstate business of such companies as appears by its terms and by the agreed statement of facts. It prohibits the maintenance of any agency within the State for carrying on an express business generally without the payment of the prescribed license fee.

The State also assumes the power to determine how much capital an express company must have as a condition of carrying on its general business within the State and how it shall be invested; to determine from time to time by its own methods whether the capital is kept good, and to revoke the license in case it shall have been reduced below the prescribed standard (Sections 3, 4, 5, 6 and 7).

The 8th section prescribes the penalty for disobedience.

Third. It then appears from the provisions of the statute in question that the Legislature of the State of Kentucky has assumed the power to determine for itself the conditions upon which an express company engaged in interstate commerce in the largest sense may carry on that business within that State. For, if any license fee may be required, there is of course no limit to the amount nor is there any limit to the amount of capital which the State may require such a company to possess

nor any restriction nor control over its power to direct the manner in which such capital shall be from time to time invested. Argument is wholly unnecessary to show that, if the genesis of such powers is possessed by State Legislatures, exclusive power to regulate commerce does not reside in the Federal Government, but in the several States.

Express companies, though very important factors in modern commercial intercourse, are but one of the numberless instrumentalities of commerce, and the same principle that would authorize the imposition of regulations and restrictions upon one of these instrumentalities would, of course, apply to all and subject all to the controlling power of State legislation exercised in one form or another.

Fourth. In the case of Woodward vs. Commonwealth, a case decided in the Court of Appeals of Kentucky, December 7, 1887, 7 Southwestern Reporter, 613, it is said: "One State cannot force its artificial creature into another. If it could it would thereby transport its laws for the government of another equal State."

In the case at bar it was said in the opinion below, "that the company of which the appellant is agent is a corporation created by the Laws of New York doing business in the State as a carrier of goods, wares and merchandise is conceded, and that it transports goods &c., out of the State into other States, and all other species of property usually incident to such transportation is admitted, both into the State and out of it. * * * That the carrying and transportation of goods from one State to another is a branch of the interstate commerce is not controverted, but it is claimed that there is nothing in the legislation imposing on those who desire to act as the agents of this foreign corpora-

tion the burden of paying to the Auditor the fee of five dollars for recording his agency, or rather *for issuing him his license to act as such.* The statute was enacted for the benefit of the citizens of the State under which the Auditor is required to have satisfactory evidence of the ability and solvency of the corporation to do that which it has undertaken to do by virtue of its act of incorporation. Those who entrust to its custody the transportation of their property are entitled to some security that its undertaking will be performed, and we find no law of Congress or any constitutional provision that would deny to the State the right to impose such a burden upon those who undertake the discharge of such responsible duties" (p. 23).

The obvious and radical error is in assuming that the subject matter is within the jurisdition of the State Legislature, whereas it is wholly excluded. A State cannot exclude either artificial or natural creatures engaged in interstate commerce or impose terms upon them. The question has nothing to do with the general powers of State Legislatures to admit or exclude foreign corporations other than those engaged in interstate and foreign commere. All the agencies of such commerce, whether legal persons or natural persons, are, by the Federal Constitution removed altogether beyond the jurisdiction of State Legislatures. When this radical principle is understood, everything falls into system and order. It has been asserted, expounded and illustrated over and over again in the decisions of this Court, but the cupidity of State Legislatures has persistently and from the beginning endeavored to evade the constitutional provision by every conceivable device.

Fifth. In Leloup vs. Port of Mobile, 127 U. S., 648, it is said: "A great number and variety of cases involving the commercial power of Congress

have been brought to the attention of this Court during the past fifteen years, which have frequently made it necessary to re-examine the whole subject with care, and the result has sometimes been that, in order to give full and fair effect to the different clauses of the Constitution, the Court has felt constrained to recur to the fundamental principles stated and illustrated with so much clearness and force by Chief-Justice MARSHALL and other members of the Court in former times, and to modify in some degree certain dicta and decisions that have occasionally been made in the intervening period. This is always done, however, with great caution and an anxious desire to place the final conclusion reached upon the fairest and most just construction of the Constitution in all its parts. In our opinion, such a construction of the Constitution leads to the conclusion that *no State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subject of that commerce or on the receipts derived from that transportation, or on the occupation or business of carrying it on, and the reason is that such taxation is a burden on that commerce and amounts to a regulation of it, which belongs solely to Congress.*"

The cases in which this constitutional doctrine has been expounded by the Court are all cited in the opinion, and it is unnecessary, and indeed would be impertinent, to review them here.

Asher vs. Texas, 128 U. S., 129, affords another illustration of the pertinacity of State Legislatures in attempting to override, flank or circumvent the commercial clause of the Federal Constitution. It was another case of a State law exacting a license tax to enable a person within the State to solicit orders and makes sales there for a person residing within another State. This Court in declaring the statute void thought it unnecessary to do more than briefly to refer to

Leloup vs. Port of Mobile, *supra*, as decisive of the question.

Under another statute of Kentucky a license tax of $3,000 was imposed on Express Companies, for the purpose of raising revenue. The Law and Equity Court of Louisville, in that State have decided that such a tax cannot be enforced.

Commonwealth of Ky. vs. U. S. Express Co. (not yet reported).

And similar taxes imposed by the States of Tennessee and Mississippi have been declared unconstitutional by the Federal Courts.

U. S. Express Co. vs. Allen, 39 Fed. R., 712.
U. S. Express Co. vs. Hemingway, 39 Fed. R., 60.

Sixth. It is said in the opinion below, as already mentioned, that, "the statute was enacted for the benefit of the citizens of the State under which the Auditor is required to have satisfactory evidence of the ability and solvency of the corporation to do that which it has undertaken to do by virtue of its act of incorporation." The answer is that the State has absolutely nothing whatever to do with the subject matter. The citizens may or may not patronize the particular agency of interstate commerce, but the regulation and control of the agency itself is within the exclusive jurisdiction of the Federal Government, and the proposition of the opinion rests upon a misconception of that fundamental proposition (p. 23). The so-called police power of a State is very frequently invoked in support of legislation of the general character now under consideration, and, without saying so in express words, it is plain that the decision below in this case anchored itself to that principle (p. 23). There is in this case, however, no dialectic basis for a discus-

sion involving that doctrine. The statute is plain, pointed and blunt in its requirement of a license to carry on through any agency interstate and foreign commerce within the State of Kentucky.

But it has been over and over again decided, to use the language of a recent case, that no matter how speciously a State statute may be worded, if in its operation it impinges upon the sphere of the Federal Government it is so far void.

Swift vs. Sutphen, 39 Federal Reporter, 632.

And in Mugler vs. Kansas, 123 U. S., 623, it is said: "It does not at all follow that every statute enacted ostensibly for the promotion of these ends is to be accepted as a legitimate exertion of the police powers of the State. There are of necessity limits beyond which legislation cannot rightfully go. * * * The Courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty, indeed, are under a solemn duty, to look at the substance of things whenever they enter upon the inquiry whether the Legislature has transcended the limits of its authority."

In Brown vs. Maryland, 12 Wheaton, 439, it is explained that the power to regulate interstate and foreign commerce necessarily implies the power to prohibit altogether, and it is said, among other things: "Commerce is intercourse. One of its most ordinary ingredients is traffic. It is inconceivable that the power to authorize this traffic, when given in the most comprehensive terms with the intent that its efficacy should be complete, should cease at the point when its continuance is indispensable to its value."

Referring to the so-called police power of a State, it is said in Railroad Company vs. Husen, 95 U. S., 465: "What that power is it is difficult to define with sharp precision. * * * It cannot be exercised over a subject confined exclusively to Congress by the Federal Constitution. * * * It (a State) may not,

under the cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce."

In Bowman vs. Railroad Company, 125 U. S., 465, it is said: "It cannot without the consent of Congress, expressed or implied, regulate commerce between its people and those of the other States of the Union in order to effect its end, however desirable such a regulation might be."

The police powers of a State cannot be exercised with respect to a subject matter beyond its control. Regulation of interstate commerce is beyond State control, being confided exclusively to Congress.

Swift vs. Sutphen, 39 Federal Reporter, 639.
Citing Henderson vs. Mayor of New York, 92 U. S., 259.

It is there said: "In whatever language a statute may be framed, its purposes must be determined by its natural and reasonable effect."

Seventh. It is submitted that the judgment should be reversed.

W. W. MAC FARLAND,
Of Counsel.

MAR 11

Supreme Court of the United States.

O. B. CRUTCHER, - - - - - - - - Plaintiff in Error,

VERSUS

COMMONWEALTH OF KENTUCKY, - Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

JAMES P. HELM,
HELM BRUCE,
For Defendant in Error.

JOHN P. MORTON & CO., PRINTERS, LOUISVILLE

Supreme Court of the United States.

O. B. CRUTCHER, - - - - *Plaintiff in Error.*

VERSUS

COMMONW'LTH OF KENTUCKY, *Defendant in Error.*

Brief for Defendant in Error.

STATEMENT OF FACTS.

The plaintiff in error was indicted in the county of Franklin, in the State of Kentucky, for having carried on business as an agent for the United States Express Company, a foreign corporation within the county mentioned, without having obtained from the Auditor of the State a license so to do, or paid the fee of $5.00, as required by "an act entitled an act to regulate agencies of foreign express companies," passed by the legislature of Kentucky, March 2, 1860, as amended by chapter 513 of the laws of 1866. R 4 5

Under this indictment he was tried and convicted, and sentenced to pay a fine of $100. R 7 He took an appeal from the judgment of the Circuit Court to the Court of Appeals of Kentucky, where the judgment of the Circuit Court was affirmed. R He has now brought the case to this court by a writ of error to the Court of Appeals of Kentucky. R 3

The record shows that the United States Express Company is a corporation created by the State of New York; that it is engaged in the usual business of express companies in carrying goods, wares, and merchandise of various descriptions for pay;

that it does such business between points wholly within the State of Kentucky, and also between points without and points within the State of Kentucky; and that about fifty per cent of the business done at the office of said company, in Franklin County, Kentucky, was composed of the receipt or delivery of parcels which had been carried, or were to be carried, between points within and points without the State of Kentucky; and that the appellant had, at the times charged in the indictment, acted as agent for the United States Express Company at its office in Frankfort, and had not obtained the license required by the statutes referred to, and as such agent had transacted the business just mentioned. R 8

It is contended by the appellant that the United States Express Company, for which he is agent, is, and at the times mentioned in the indictment was, engaged in interstate commerce, and that the acts of the Kentucky Legislature, above referred to, were and are unconstitutional and void, as being attempts to regulate commerce among the States; and also as being in conflict with the first section of the fourteenth amendment to the Constitution of the United States, and with Article IV, Section 2, of that Constitution.

In order that the court may see the full scope and intent of the acts complained of, we hereby quote them in full. The act March 2, 1860, is as follows:

"An Act to Regulate Agencies of Foreign Express Companies:

"SECTION 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That it shall not be lawful, after the first day of May, 1860, for any agent of any express company, not incorporated by the laws of this Commonwealth, to set up, establish, or carry on the business of transportation in this State, without first obtaining a license from the Auditor of Public Accounts to carry on such business.

"SEC. 2. Before the Auditor shall issue such license to any agent of any company incorporated by any State of the United States, there shall be filed in his office a copy of the charter of such company, and a statement made, under oath of its president or secretary, showing its assets and liabilities,

and distinctly showing the amount of its capital stock, and how the same has been paid, and of what the assets of the company consist, the amount of losses due and unpaid by said company, if any, and all other claims against said company or other indebtedness, due or not due; and such statement shall show that the company is possessed of an actual capital of at least $150,000, either in cash or in safe investment, exclusive of stock notes. Upon the filing of the statement above provided, and furnishing the Auditor with satisfactory evidence of such capital, it shall be his duty to issue license to such agent or agents as the company may direct to carry on the business of expressing or transportation in this State.

"SEC. 3. Before the Auditor shall issue license to any agent of any express or transporation company incorporated by any foreign government, or any association or partnership acting under the laws of any foreign government, there shall be filed in his office a statement setting forth the act of incorporation or charter, or the articles of association, or by-laws under which they act, and setting forth the matters required by the preceding section of this act to be specified; and satisfactory evidence shall be furnished to the Auditor that such company has on deposit in the United States, or has invested in the stock of some one or more of the United States, or in some safe dividend-paying stocks in the United States, the sum of $150,000, which statement shall be verified by the oath of the president of such company, its general agent in the United States, or the agent applying for such license; and upon the due filing of such statement, and furnishing the Auditor with satisfactory evidence of such deposit or investment, it shall be his duty to issue such license to the agent or agents applying for the same.

"SEC. 4. The statements required by the foreging sections shall be renewed in each year thereafter, either in the months of January or July; and the Auditor, on being satisfied that the capital or deposit, consisting of cash securities or investments as provided in this act, remain secure to the amount of $150,000, shall renew such license.

"SEC. 5. Every agent obtaining such license, or renewal thereof, as required by this act, shall, before transacting any business of transportation or expressing in this State, file in the office of the clerk of the County Court in which he or they may desire to do business for said company, a copy of the license, which shall be carefully preserved by the clerk for public inspection; and, in case of a renewal, shall, in like manner, file in the office of a clerk of the County Court a

copy of such renewed statement and license within thirty days after it shall be filed with the Auditor.

"SEC. 6. The statements required by the foregoing sections shall be made up to a period within six months preceding the filing of the same with the Auditor.

"SEC. 7. If, at any time after the filing of the statements by this act required, it shall be made to appear to the Auditor that the available capital of any such company has been reduced, by misfortune or otherwise, below the sum of $150,000, it shall be his duty to revoke the license or licenses granted to any agent or agents of such company.

"SEC. 8. Any person who shall set up, establish, carry on, or transact any business for any transportation or express company not incorporated by the law of this State, without having obtained license as by this act required, or who shall in any way violate the provisions of this act, shall be fined for every such offense not less than one hundred nor more than five hundred dollars, at the discretion of a jury, to be recovered as like fines in other cases: *Provided*, That it shall and may be lawful for any person, who has a right of action that has accrued in this State against such foreign transportation or express company, to sue any such company in any county in this State where its agent may be found; *Provided*, further, That nothing contained in this act shall be construed to release said company from liability as common carriers.

"SEC. 9. For any license issued by the Auditor under this act, and for each renewal thereof, he shall be allowed the sum of $2.50, to be paid by the agent or company taking out such license.

"SEC. 10. This act shall not apply to any express or transportation company wholly composed of residents of this State, or to any corporation chartered by this State, except to impose the liabilities of a common carrier; nor shall it apply to any person engaged in the ordinary business of transportation as common carrier or otherwise. This act to be in force from its passage." (Myers' Supplement, p. 228.)

The amendatory act referred to simply makes a change in the amount of fees to be paid for the services performed by officers of the State under the foregoing act, and is as follows:

"*Be it enacted by the General Assembly of the Commonwealth of Kentucky:* SECTION 1. That foreign insurance and express companies of every description, doing business in this State, shall pay to the Auditor of Public Accounts, for services rendered said companies, the following fees, viz: For filing and

preserving certified copy of charter, $5; for filing an original or annual statement, $10; for each original or renewal license with certified copy of statement, $5; which fees shall be paid by the agent or agents, or companies, before acting under the license." (Ky. Acts, 1865–6, p. 82.)

Argument.

As to the proposition that the foregoing acts violate the provisions of Art. 4, Sec. 2, of the Federal Constitution, which provides that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, we suppose it is sufficient to say that it has long since been settled by this court that corporations are not embraced within this provision of the Federal Constitution. (Paul v. Virginia, 8 Wallace, 168; Doyle v. Insurance Co., 94 U.S. 535.)

As to the proposition that these statutes are in violation of the first section of the fourteenth amendment to the Federal Constitution, we will simply say that we do not understand the foundation for this contention; and counsel for plaintiff in error in his argument before the Court of Appeals of Kentucky, while he stated the proposition that these laws did violate this amendment, yet, when he came to his argument, abandoned this point and made no reference to it whatever.

The argument in the State court was devoted entirely to the proposition that these acts were unconstitutional as being regulations of interstate commerce; and, as we suppose the argument here will be practically the same as that just referred to, we will proceed to consider it.

We, for the Commonwealth of Kentucky, contend that the acts complained of are not regulations of interstate commerce, though they do affect it; but that they were enacted in the legitimate exercise of the police power of the State.

The effect of the statutes is to require all express companies doing business in Kentucky to have an actual capital in cash or safe investments of at least $150,000, and further-

more to require that all such companies shall satisfy a public officer of the State that it has such capital by filing with him a sworn statement showing the fact; and furthermore to require a copy of the charter of the company to be filed with this same officer of the State, showing the rights and powers of the corporation; and furthermore to require that the authorized agents of the corporation shall be designated by licenses to be issued to them on the filing of the statement and copy of the charter just mentioned, and which license and a copy of which statement is required to be filed by the agent in any county in which he proposes to do business for the company; and furthermore to require that the officers of the State whose duty it is made to receive and file these papers and issue licenses, and to give copies thereof, shall be paid for their services by the agent seeking them.

We suppose that the only serious question involved in the case is as to whether or not the State has the power to require that all express companies doing business in the State shall have an actual capital of at least $150,000. If it has the power to require this, then it unquestionably has the power to require that some officer of the State shall be satisfied of this fact by the filing with him of a sworn statement showing the fact. And we suppose there can not be any question but that the State has the right to require that the charter of the corporation doing business in the State, and which charter fixes the rights and powers, and often the liabilities of the corporation, shall be made known to the people of this State who are to deal with the corporation, by filing a copy of said charter in a public office of the State.

And we understand it to be the settled law that where a State has the right to make such requirements as these, which call for the performance of duties on the part of State officers, it has also the right to require that reasonable fees shall be paid by the party seeking the performance of these offices, to cover the cost and to make reasonable compensation to the officers for the services performed. (Smith v. Alabama, 124

U. S. 480). As the fees required by the statutes under consideration are very small, we suppose it can not be reasonably claimed that they do more than cover the cost and a fair compensation to the officers who are required to perform the services mentioned in the case. It seems to us therefore, as stated above, that the only serious question involved in the case is as to the power of the State to require that all express companies doing business within the State shall have an actual capital of at least $150,000, and shall identify its agents by means of licenses issued by the State to such agents upon the State's being satisfied that the corporation has the capital required.

Of course we do not deny that the business done by an express company is commerce. And of course we are familiar with the line of decisions of this court, holding that a State can not charge a person engaged in interstate commerce for the privilege of coming into the State to do business, and in this way raise revenue for the State by a tax on interstate commerce; and we are also familiar with the line of decisions by this court holding that a State can not tax the occupation of carrying on interstate commerce, no matter in what form the attempt to tax may be imposed, whether it be imposed as a tax on the articles transported, or upon the receipts from the transportation, or upon the privilege of selling. The great majority of cases decided by this court in which State laws have been held invalid, as conflicting with the commerce clause of the Federal Constitution, have been cases involving the validity of tax laws. And of course wherever this is the case, then it is manifest that the law is not enacted by virtue of the State's police power; because, while of course it may be said that there is a connection between the taxing power and the police power of a State, in that the State raises taxes in order to enable it to exert its police power, among its other duties, yet there is simply a connection between these two powers; they certainly are not the same in the sense in which the police power of a State is generally referred to. And while, in these tax cases that have come before this court, the court has

necessarily said a great deal in its various opinions on the general nature of the power of Congress to regulate commerce, and on the power of the States to interfere with it or exercise a concurrent power, yet it is of course true, as this court in its opinions has again and again said, in speaking on this very subject, that the opinion of the court must always be taken in connection with the facts of the case under consideration and with the exact question that was then before the court for decision. It was a failure to remember this consideration that caused Chief Justice Taney, as early as 1846, to say, in the "License Cases" (5th Howard), that different expressions and disconnected sentences in the opinions of this court, or different members of the court, had been taken hold of and used to support principles that the authors of the opinions had never intended to be deduced from their words.

As these cases involving the validity of tax laws could not, in the very nature of the case, involve a consideration of the nature and extent of the State's police power, except by way of illustration, therefore, inasmuch as the present case is not a tax case, but is a case in which the statute of the State is claimed to be valid under the police power of the State, we derive more assistance and instruction from the decisions of this court, wherein the court has been called upon to decide expressly whether or not a given act by a State was a valid exercise of the police power of the State, than we do from the class of cases above referred to, where the question of police power was not and could not have been directly involved.

For these reasons it seems to us that the case of Brown v. Maryland (12 Wheaton), the Passenger cases (7 Howard), the State Freight Tax case (15 Wallace), the Railroad Gross Receipts case in the same volume, the Florida Telegraph case (96 U. S.), the Texas Telegraph case (105 U. S.), the Massachusetts Telegraph case (125 U. S.), the Alabama Telegraph case (127 U. S.), the case of Moran v. New Orleans (112 U. S.), the case of Glouster Ferry Co. v. Pennsylvania (114 U. S.), and Picard v. Pullman Car Co. (117 U. S.), are not nearly so instructive in the

consideration of the case at bar as are such cases as United States v. Miln (11 Peters), the License cases (5 Howard), Smith v. Alabama (124 U. S.), Patterson v. Kentucky (97 U. S.), Railroad Company v. Alabama (128 U. S.), and others of that character.

It is of course an extremely difficult, if not an absolutely impossible thing, to define what is meant by the police power of a State.

In City of New York v. Miln (11 Peters, 139) this court, speaking through Justice Barbour, after having stated that it was exceedingly difficult to define the police power of a State, said:

"If we were to attempt it we should say that every law came within this description which concerned the welfare of the whole people of a State, or any individual within it; whether it relate to their rights or their duties; whether it respected them as men or as citizens of the State; whether in their public or private relations; whether it related to the rights of persons or of property, of the whole people of a State or of any individual within it; and whose operation was within the territorial limits of the State and upon the persons and things within its jurisdiction."

The Supreme Court of Massachusetts, through Chief Justice Shaw, in Commonwealth v. Alger (7 Cush. 53), said in reference to the police power:

"The power we allude to is rather the police power; the power vested in the legislature by the Constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the Commonwealth and of the subjects of the same."

The Supreme Court of Vermont, speaking through Chief Justice Redfield, in Thorpe v. R. & B. R. R. Co. (27 Vermont, 140), said:

"This police power of the State extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State."

This court in the case of Patterson v. Kentucky (97 U. S. 504), speaking through Justice Harlan, and quoting from Cooley's Constitutional Limitations, 574, said:

"If the power only extends to a just regulation of rights with a view to the due protection and enjoyment of all, and does not deprive any one of that which is justly and properly his own, it is obvious that its possession by the State and its exercise for the regulation of the property and actions of its citizens, can not well constitute an invasion of national jurisdiction, or offer a basis for an appeal to the protection of the national authorities."

But, however courts and text-writers may differ as to the definition of the police power of a State, all agree that such a power does exist in the States, that it was never surrendered to Congress, that it is absolutely essential to the existence of the States, and that it embraces the power to make all needful regulations for the protection of its citizens. It is well that no constitution, or fixed law of any kind, ever attempted to define this power. It must always be sufficient to meet the exigencies of the times, whatever they may be, or the government must perish; and as no human mind can comprehend the future, none can tell what may or may not become necessary to meet its requirements. The habits and customs of people, their pursuits, their manner of conducting business, their means of communication, differ so widely at different times that it is absolutely necessary that governments should have a power to meet the exigencies of the times. And in a government like ours, unique in history, where in every State there are two governments coexistent, where every citizen is at one and the same time the citizen of two governments, the subject of two sovereignties; and when we recollect that there is no isolated fact, no solitary event, but that every occurrence is connected directly or collaterally with countless others, we say, that when these considerations are remembered, one can not fail to recognize the danger of testing by *extreme cases* these independent powers of distinct sovereignties governing the same people at the same time,

the danger in insisting that the exercise in a certain manner of a given power of one of these governments is necessarily invalid, because it may be seen that by the application of the same power in an extreme case of kindred nature some object might be effected which is more legitimately the subject of a different power in the other government.

Thus it was held in McCulloch v. Maryland (4 Wheat.) that to tax by a stamp duty the paper on which the notes of a national bank were issued was a tax on the operations of the bank, and therefore a tax on the exercise of Federal powers, and that such a tax by a State was invalid. Then when the case of Railroad Company v. Penniston (18 Wallace) arose, where the State of Nebraska laid a tax on the road-bed, telegraph wires, etc. of a railroad company, incorporated by Congress, and engaged in transporting troops, stores, and telegraphic messages of the United States, it was urged by able counsel, and with great force by a member of this court, that the principles settled in McCulloch v. Maryland, if logically applied to this latter case, inevitably rendered the tax on the railroad invalid; for, it was argued in effect, the road-bed of this railroad company is as absolutely indispensable to the operation of this railroad as is paper to the issue of bank notes, and therefore a tax on the road-bed of the railroad company is as much a tax on its operations as a tax on the paper on which the bank notes are issued is a tax on the operations of the bank; and that as the railroad company was engaged in transporting United States troops and stores, which was one of the main purposes of chartering the company, therefore it was engaged in the exercise of a Federal power, just as was the bank, which was used as an instrument in executing the financial policy of the Government, and therefore that a tax on the one was invalid for the same reason that a tax on the other was. But this court, seeing the effect of carrying this argument to the extremity to which it might be logically carried, refused to accept it as valid, saying:

"It can not be that a State tax which remotely *affects* the efficient exercise of a Federal power is for that reason alone

inhibited by the Constitution. To hold that would be to deny to the States all power to tax persons or property. . . . The States are and they must ever be co-existent with the National Government. Hence the Federal Constitution must receive a practical construction. Its limitations and its implied prohibitions must not be extended so far as to destroy the necessary powers of the States or prevent their efficient exercise."

This same principle has frequently been announced by this court in other cases, and seems to us to be absolutely necessary if the practical utility of the different powers of our peculiar government is to be preserved. It must be remembered that the same result may sometimes be reached by the exercise of two different powers. If these powers are wielded by the same government, there is of course no danger of a conflict; but when they are exercised by different governments there is such danger. And of course, when this conflict comes, the weaker power must yield. But the weaker power may be exercised and the result accomplished, and the stronger power may not be exercised at all, so that in such a case there is no conflict, and the result accomplished by the weaker power is valid.

Whatever may be the correct statement of the view now taken by this court on the question of the *exclusiveness* of the power of Congress over interstate commerce, it is of course remembered that at one time the majority of this court held that the grant of power to Congress to regulate interstate commerce did not exclude the power of the States in that respect so long as Congress remained silent; but that whenever Congress spoke, its dictum was supreme. This was the principle on which the majority of the court decided the case of Pierce v. New Hampshire, one of the "License Cases" (5 Howard), where this view was most ably presented by Chief Justice Taney (pp. 578, etc.), and where he and Justice Catron (p. 603) seem to us to show very clearly that such was the view of Chief Justice Marshall, as shown by his opinions in Gibbons v. Ogden (9 Wheat.) and Wilson v. Blackbird Creek Marsh Company (2 Peters).

The court seems now, however, to have settled that Congress alone has the power to "regulate commerce" in matters susceptible of general and uniform regulation; but that in matters which are affected by local considerations the power to "regulate commerce" is possessed by both the Federal and State legislatures, subject, however, to the modification that whenever Congress speaks on the subject that is the supreme law. (Phila. Steamship Co. v. Pa., 122 U. S. 336; Robbins v. Shelby Tax Dist. Co., 120 U. S. 489, 492, 493.) In other words, in matters best susceptible of local regulation the States have concurrent power with Congress to pass laws that are directly and unquestionably regulations of interstate commerce, and are intended as such; but, as to matters susceptible of uniform regulation, the power to pass laws the object of which is to regulate interstate commerce is in Congress alone.

But even upon a matter which might be said to be susceptible of uniform regulation, under a law the object of which was to "regulate commerce," the State may make a *police* regulation which may affect it, but which, if it appears to be a *bona fide* police regulation and not a mere covered attempt to regulate commerce, will still be valid unless a conflict arises between this regulation and some regulation by Congress under its commercial power.

Thus, in City of New York v. Miln (11 Peters, 130), a statute of New York was considered which required the master of every vessel arriving at the port of New York to report to the Mayor of New York a full list of his passengers, their former homes, vocations, etc. It was contended that this was a regulation of foreign and interstate commerce, and therefore void. The members of the court were then divided on the question of the exclusiveness of the power of Congress to regulate such commerce. Justice Story thought the power was exclusive. Justice Thompson thought it was not exclusive, and that the States had the power to make regulations on the subject, provided they did not conflict with any Congressional regulation. But the opinion of the court, by Justice Barbour, waived the consideration of this

question, and held the act constitutional upon the sole ground that it was a valid exercise of the police power of the State, the main object of the act being to provide against paupers; and in the course of the opinion (page 137) the court, after referring to a part of the opinion in Gibbons v. Ogden, says:

"From this it appears that whilst a State is acting within the legitimate scope of its power as to the end to be attained, it may use whatsoever means, being appropriate to that end, it may think fit; although they may be the same, or so nearly the same, as scarcely to be distinguishable from those adopted by Congress *acting under a different power*, subject only, say the court, to this limitation, that in the event of collision the law of the State must yield to the law of Congress." (Our italics.)

So, in the late case of Smith v. Alabama (124 U. S. 465), an Alabama statute was considered which required all locomotive engineers to submit themselves to an examination by a State Board of Examiners as to their qualifications, which board had the power to refuse to license any applicant found to be unfit to act. Every one who received a license had to pay five dollars to the examining board; and any one running an engine without such license was guilty of a misdemeanor, and liable to a fine of from $50 to $500. This court, in an opinion by Justice Matthews, conceded that the subject-matter of this legislation was one upon which Congress had the power to legislate, under the commerce clause of the Constitution. And it seems to us that it must be admitted that this was a subject that was altogether susceptible of uniform regulation. This, we think, is clearly shown by the fact that uniform regulations have been provided by Congress as to the qualifications of steamboat pilots and engineers (a fact noticed in the opinion of the court). The duties and qualifications of railroad engineers would seem much more susceptible of uniform regulation and much less dependent on local considerations than in the case of steamboat pilots. And yet this court held that this law of the State of Alabama

prescribing these duties and qualifications of railroad locomotive engineers, and requiring them to be licensed by the State, was valid, saying:

"It is properly an act of legislation within the scope of the admitted power reserved to the States to regulate the relative rights and duties of persons being and acting within its territorial jurisdiction, intended to operate so as to secure for the public safety of person and property; and (thirdly, that) so far as it affects transactions of commerce among the States, it does so only indirectly, incidentally, and remotely, and not so as to burden or impede them, and, in the particulars in which it touches those subjects at all, it is not in conflict with any express enactment of Congress on the subject, nor contrary to any intention of Congress to be presumed from its silence."

From this case it is evident that the silence of Congress upon a subject which is within its commercial control, and which is susceptible of uniform regulation, is not *necessarily* a prohibition against any regulation by the State that may affect this subject. But the court seems to treat the question of the effect of the silence of Congress on a given subject as a question of *intention*, to be determined by the court. And as this is clear from the conclusion reached in the particular case before the court, so it is clear from the general principles stated by the court in the beginning of the opinion, where it says:

"As the regulation of commerce may consist in abstaining from prescribing positive rules for its conduct, it can not always be said that the power to regulate is dormant because not affirmatively exercised. And *when it is manifest that Congress intends* to leave that commerce which is subject to its jurisdiction free and unfettered by any positive regulations, such an intention would be contravened by State laws operating as regulations of commerce, as much as though these had been expressly forbidden. In such cases the existence of the power to regulate commerce in Congress has been construed to be not only paramount but exclusive, so as to withdraw the subject as the basis of legislation altogether from the States. There are many cases, however, when the acknowledged powers of the State may be exerted and applied in such a manner as to affect foreign or interstate commerce without being intended to operate as commercial regulations. If their operation and application in such

cases regulate such commerce so as to conflict with the regulation of the same subject by Congress, either as expressed in positive laws or implied from the absence of legislation, such legislation on the part of the State to the extent of that conflict must be regarded as annulled." (Our italics.)

This case has since been approved in Railroad Company v. Alabama (128 U. S. 96).

The court in these cases considered that the silence of Congress on the subject of the qualifications of locomotive engineers did not evince an intention to provide in effect that anybody should have the right to run an engine that could get a position, without regard to whether he was fit or unfit for the place, and that the State should not have power to pass reasonable regulations to secure competent men for such responsible positions, as a protection for the lives and properties of its citizens.

And we furthermore call attention with reference to these cases to the fact that the argument might have been advanced, and probably was advanced, that *if the State has the power* to make such regulations as these, it may make any it choses, and thereby it might greatly impede interstate commerce. But the court states that no objection can be found to any of the special provisions of the statute; that it does not limit the number of persons that may be licensed, nor impose any *arbitrary* conditions on the grant; and the court evidently considered, which is manifestly true, that if it should be apparent that any regulation by a State was not made in good faith in the exercise of its legitimate power, but was simply a covert attempt to invade the domain of Congress, it could be declared unconstitutional on that ground.

Referring to a similar argument as to the possibility of abuse of the State's police power in the License Cases, Mr. Justice McLean said: "This logic is not good when applied to the practical operations of the government. The argument is, power may be abused, therefore it can not be exer-

cised. What power dependent on human agency may not be abused?" And again he says: "Under the *pretence* of a police regulation a State can not counteract the commercial power of Congress."

Let us now apply these principles to the case at bar in determining the question of the power of the State to require all express companies to have an actual capital of $150,000.

We do not think any question can fairly be made of the good faith of the State in making this requirement for the security of its citizens who should deal with these express companies. This statute has stood upon the statute books of Kentucky as the law of the State for thirty years; and when its provisions are examined, no possible motive can be perceived for its passage, except that of providing security for the citizens of the State, who intrust their property to such corporations. The State derives no revenue from the law; for the fees charged under it do not go into the treasury of the State, but go to the officers who are required to perform services under the law, to cover the cost and a reasonable compensation to them for their services. In fact, when the original law was passed it only provided a fee of $2.50 for issuing or renewing a license, and made no other provision at all for other services, such as giving copies of statements etc.; and while these fees were subsequently raised, because believed to be inadequate, just as the fees of all clerical officers are constantly being modified, yet the extremely low fee fixed by the original act should satisfy any one that the law was not passed from any motive of pecuniary benefit either to the State or any of her officers. And the Court of Appeals of the State has held that the statute was simply enacted for the benefit of the citizens of the State who might deal with such corporations, that when they intrusted their property to them they might have some security that the undertakings of the companies would be performed. And as there is no limit upon the number of express companies that may be licensed, and no arbitrary conditions annexed to the

issuing of the license, but it is made the duty of the Auditor to issue the license on being satisfied that the company has the financial basis required, which is not an extravagant one; therefore the question is simply reduced to one of the right of the State to require that a foreign corporation doing an express business in the State shall have an actual capital of a certain fixed amount.

The law does not conflict with any law of Congress on the subject; Congress has made no regulation covering the matter; and as the power exercised by the State is one which it unquestionably has unless its exercise conflicts with some express enactment or presumed intention of Congress, therefore the question is as to whether or not Congress by its silence on this subject can be presumed to have intended that *any* corporation might go into a State other than that of its domicil, and there do business of an interstate character *without any reference to whether or not it was solvent?* Does Congress by its silence mean to say that it will not make any regulation on this subject, and that no State shall have the right to do so; but that any corporation may go into a foreign State where it is not known, either as to the extent of its legal or financial powers or as to the agents that are accredited by it, and may then refuse to make known any of these facts, and insist on carrying on this important business and making important contracts with, and securing valuable property of the citizens of this State, though it (the corporation) may be utterly irresponsible? Surely this can not have been the intention of Congress. On the contrary, it must be presumed that Congress understood the propriety and necessity of such regulations, and left them to the States to make, according to the character of the corporations concerned and the necessities of the case.

If such regulations are wise and prudent, then it can not be presumed that Congress, by its silence, meant to refuse to make them and to forbid any other power to make them, and thus to refuse to do or permit to be done that which wisdom and prudence dictate.

And that such regulations are wise and prudent can scarcely be questioned. One of the most marvelous features of the business life of to-day is the wonderful part taken therein by corporations. Although they have long been known to the law, yet we all know that it is only within comparatively a few years past that they have taken the wonderful hold on all forms of business which they now possess. Single-handed enterprise and the efforts of partnerships are ceasing to be felt, and corporations are assuming to conduct almost every department of business. Why this should have been peculiarly true of late years and not of former times, we do not know; but every one recognizes the reason why corporations are so extremely popular now. It is on account not only of their power, but of the *security to those interested in them;* because as a general rule—it is certainly true in Kentucky—the stockholders are not liable for the corporation's obligations. But on account of this very consideration, viz., the security of the individual members of a corporation, there is always danger of a lack of security to those dealing with the corporation. No observant man can have failed to notice the wrongs that are frequently perpetrated by irresponsible corporations assuming obligations which no one can be made to fulfill. A corporation properly and honestly conducted is the very consummation of wisdom in devising means of conducting business; but the nature of corporations affords *opportunities* for the perpetration of wrongs that are so familiar that it would be a waste of time to enlarge upon them.

The foregoing considerations show that it is of the gravest importance that proper regulations should be made to secure those who have to deal with corporations. As to corporations of its own creation, a State can guard this matter in their charters; but it has no control of the charters of foreign corporations. It is surely, therefore, the part of wisdom and prudence that a State, for the protection of its citizens, should require foreign corporations desiring to engage in important business in the State to show that they are solvent and responsible to a reasonable extent for the fulfillment of obliga-

tions of the character they propose to assume. As to corporations generally, this court has held that a State has the absolute uncontrollable right to exclude them altogether. (Paul v. Virginia, 8 Wall. 168.) But as to corporations engaged in interstate commerce, the court has held that Congress may authorize them to enter a State, and that, if it does give this authority, the State can not exclude the corporation. (Florida Telegraph case, 96 U. S. 1.) And this modification of the proposition announced in Paul v. Virginia was said by this court in P. M. Co. v. Pa., 125 U. S. 185, to be the only modification of it.

While, of course, as to corporations engaging in interstate commerce, Congress might regulate the matter, yet the wisdom of its attempting to do so is doubtful. It manifestly could not make one regulation as to the amount of capital necessary for all corporations engaging in all kinds of interstate commerce, especially in view of the wide meaning which has been given by this court to that expression; for corporations doing different kinds of business require very different amounts of capital. Then again, even corporations engaging in the same kind of business, but in different localities, where the population, the business, and the wealth of the communities greatly differ, require, of course, very different amounts of capital. The subject, therefore, would be an exceedingly difficult one for Congress to regulate properly, if it should attempt to regulate it at all. For example, it would be altogether improper to require an express company, desiring to do business between two of the sparsely populated western States, to have the same capital that ~~which~~ should be had by such a corporation engaging in such business between the densely populated and wealthy eastern States.

In conclusion, therefore, we say that it is a wise and prudent requirement for the protection of the citizens of a State that such corporations as the one at bar should be required to have, and to show that they have, an actual capital commensurate with the character of obligations they propose to assume; and that while, as to corporations engaged in inter-

state commerce, Congress has the power to regulate this matter, yet it would be an exceedingly difficult one to regulate by a uniform system, and the silence of Congress on the subject should be presumed to show an intention not to forbid the making of any regulation on a subject that ought to be regulated, but rather to leave the matter to the States to regulate in the exercise of their undoubted power to make proper regulations "to secure for the public safety of person and property." (Smith v. Alabama, *supra*.) We therefore ask that the judgment of the Court of Appeals of Kentucky be affirmed.

JAMES P. HELM,
HELM BRUCE,
For Defendant in Error.

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C. G. Burgoyne's Printing Business, 140-150 Centre St., N. Y.

Supreme Court of the United States.

O. R. CRUTCHER,
Plaintiff in Error,

AGAINST

THE COMMONWEALTH OF KENTUCKY,
Defendant in Error.

October Term,
1889.
No. 1205.

The plaintiff in error by his counsel moves the Court that this cause be advanced on the calendar and have precedence over all cases to which the United States is not a party, and that it may be set down for argument on a day to be fixed by the Court, on the ground that it is a case on a writ of error to revise the judgment of a State Court in a criminal case.

October, 1889.

W. W. MAC FARLAND,
Of Counsel for Plaintiff in Error.

Please take notice that the above motion will be brought on for hearing before this Court on the 4th day of November, 1889, at the opening of Court on that day.

W. W. MAC FARLAND,
Of Counsel for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

O. R. CRUTCHER,
Plaintiff in Error,

AGAINST

THE COMMONWEALTH OF KENTUCKY,
Defendant in Error.

SOUTHERN DISTRICT OF NEW YORK, ss.:

FRANK H. PLATT, being duly sworn, deposes and says: I am general counsel of the United States Express Company. The said company is engaged in the conduct of a general express business between points in different parts of the United States. Its principal office is in the City of New York, but it also has a number of offices in Kentucky, among others, one at Frankfort, Kentucky, where the plaintiff in error acted as its agent. The said agent was indicted in November, 1888, under an act of the State of Kentucky, requiring agents of all express companies not incorporated by that State to obtain a license from the Auditor of Public Accounts before carrying on the express business. The Auditor is required by said act to grant such license only on the agent's filing a statement showing the assets and liabilities of the company, the amount of its capital stock, and how the same has been paid, the losses due and unpaid, and all other claims or indebtedness, and such statement must show that the company has an actual capital of $150,000 in cash or safe investments. Such statement and license must be renewed annually and a copy of the statement and license must be filed with the Clerk of each county where business is

done. A fee of ten dollars is exacted for filing the statement and a further fee of five dollars for each copy of the statement and license to be filed in the office of the County Clerk.

The plaintiff in error was convicted under said statute of carrying on the express business without obtaining a license and has brought the cause to this Court on the ground that the said acts are unconstitutional as amounting to a regulation of commerce between the States.

The Express Company has a large number of agents in Kentucky, none of whom have ever taken out the license required by said statute, and all of whom are liable to be indicted. Indictments have been found against three in addition to that against Crutcher, and a second indictment has been found against Crutcher for carrying on the express business without a license since the finding of the first indictment. Proceedings are now pending on said indictments, but the prosecuting attorney has agreed to await the decision in this case before pressing the other cases, provided this one be brought to a hearing with all despatch.

FRANK H. PLATT.

Sworn to before me this 26th day of October, 1889.

WM. PARKIN,
Notary Public,
N. Y. Co.

[SEAL.]

Office Supreme Court U. S.
FILED.
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JAMES. H. McKENNEY.
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 344.

LOUIS STEIN, EXECUTOR OF ALBERT STEIN, DECEASED,
APPELLANT,

vs.

THE BIENVILLE WATER SUPPLY COMPANY,
APPELLEE.

SUPPLEMENTAL BRIEF OF T. A. HAMILTON, OF COUNSEL FOR APPELLEE.

Mr. Faith, one of the counsel for the appellant, in his printed brief lays some stress on decisions of the Alabama supreme court in cases decided in 16th, 17th, 24th, 27th, 49th, and 54th Alabama Reports, as if they had some significance in connection with this case; but in reality the questions now under consideration have never come before the supreme court of Alabama at all.

The case in 16th Alabama Reports was decided long before 1860 and while Mr. Stein's twenty years' contract was in force, and simply decided that he was entitled to sue for damage done to the water in the Three-Mile creek.

See 16th Ala. R., 214, 217, 218.

In 17th Alabama Reports the question was as to whether Mr. Stein should be taxed upon a valuation simply of his pipes and materials used by him in his works, or for the additional value given to those pipes and materials by reason of his franchise, whatever that might be, and the court simply held he was liable to be taxed also upon the additional value given to them by reason of their connection with his water works. It may be observed that in this case the agreement with Mr. Stein is described as a contract giving him the privilege of supplying water *from Three-Mile creek.*

17th Ala. R., 239.

In 24th Alabama Reports one Burden claimed damages from Stein, a part owner of Three-Mile creek, for having taken more water than he was entitled to from the creek. Stein defended, among other things, on the ground that the Legislature had given him an unlimited right to use as much water as he wanted from that creek; but the court said the Legislature had not granted him the right to use that water at all to the injury of other parties; that the grant was to conduct the water into the city, and then to sell at certain rates to such persons as might desire to use it, but that this privilege would not give him the right to take other people's water any more than the grant of a right to construct a railroad between two named points would carry

with it the right to own and use any material that might be found upon the route.

See 24 Ala. R., 145.

The case in 27th Alabama Reports, 104 *et seq.*, is similar.

See 27 Ala. R., 104 *et seq.*, 116.

In 24th Alabama Reports, 344, decided in 1854, the court simply held that under Mr. Stein's contract to furnish water to citizens of Mobile he was liable to citizens toward whom he failed in this duty.

24 Ala. R., 344.

The case in 24th Alabama Reports, 591, was as to whether or not Mr. Stein's interest in the water works was liable to taxation by the city of Mobile.

24 Ala. R., 591.

In 49th Alabama Reports the judge in his opinion plainly says the only question in the case was as to whether under his contract with the city the city could require him to pay a license tax for carrying on the business.

49 Ala. R., 362–368.

The only other case referred to by Mr. Faith is that of the Mayor, &c., of Mobile *vs.* Stein, ex'r, in 54th Ala. Reports, where the only point of decision in effect was that there was nothing in the contract between the city and Mr. Stein which exempted the property from taxation by the city of Mobile.

It may not be unworthy of observation, however, that in this case the court, speaking through Judge Manning, speaks of the grant to Mr. Stein as a "grant to him of the sole

privilege of *supplying the city of Mobile with water from the Three-Mile creek for twenty years from the date of the agreement, and the sole right to have, possess, and operate the water works erected for that purpose after said period of twenty years until the city should purchase them of him at their fair value,* to be ascertained as provided in the agreement, and that he should have the advantage and benefit of the ordinances enacted for the protection of the property and rights so to be acquired by him.

See 54 Ala. R., 23–27, 28.

I respectfully insist there is nothing in the decisions of the supreme court of Alabama which conflicts with our views.

I may here add, also, that even if the third section of the act of December, 1820, could be considered to have continued in force in any way after the failure to comply with the requirement that the water should have been conducted into the city of Mobile within three years from December 20, 1820, still, according to the principles of construction applicable to such a case, it might well be held, and probably it properly should be held, when the whole statute was construed together, that it conveyed no authority for conducting water from any other source than Three-Mile creek.

In any event, I respectfully submit that upon a full consideration of the whole case the decision of the court below in sustaining the demurrer and dismissing the bill should be affirmed.

T. A. HAMILTON,
Of Counsel for Appellee.

I consent that Mr. Hamilton should have the right to file a supplemental brief in Stein *vs.* Bienville Co.

W. HALLETT PHILLIPS,
For Appellant.

APRIL 28, 1891.

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 1205.

O. R. CRUTCHER

vs.

THE COMMONWEALTH OF KENTUCKY.

See, also, in addition to the authorities cited on the brief for the defendant in error, the case of Morgan *vs.* Louisiana, 118 U. S., 455.

See, also Ouachita Packet Co. *vs.* Aikin, 121 U. S., 444.

Compare Cooley *vs.* Board of Warders, 12 How., 299, where there was no conflict between the State statute and an act of Congress, with Sinnot *vs.* Davenport, 22 How., 227, where there was this conflict.

JAMES P. HELM,
For Defendant in Error.